

**PART 1800—DECLARATION OF
PARTY STATE ELIGIBILITY FOR
NORTHEAST INTERSTATE LOW-
LEVEL RADIOACTIVE WASTE
COMPACT**

Sec.

1800.10 Purpose and scope.

1800.11 Definitions.

1800.12 Procedures for declaring a state eligible for membership in the Compact.

1800.13 Conditions for becoming an eligible party state.

1800.14 Modification to and enforcement of the rules in this part.

AUTHORITY: Sec. 227, Art. IV(i)(7), Art. VII(e), Pub. L. 99-240, 99 Stat. 1842, 1914, 1921-1922.

SOURCE: 65 FR 30835, May 15, 2000, unless otherwise noted.

§ 1800.10 Purpose and scope.

Pursuant to Articles IV.i.(1), (7), (15), and VII.e. of the Northeast Interstate Low-Level Radioactive Waste Compact (enacted by the “Omnibus Low-Level Radioactive Waste Compact Consent Act of 1985,” Public Law 99-240, 99 Stat. 1842, Title I) (the “Compact”), the Northeast Interstate Low-Level Radioactive Waste Commission (the “Commission”) establishes through this part the conditions that it deems necessary and appropriate to be met by a state requesting eligibility to become a party state to this Compact. The Commission shall apply these conditions to evaluate the petition of any state seeking to be eligible to become a party state pursuant to Article VII of the Compact.

§ 1800.11 Definitions.

The definitions contained in Article II of the Compact and Article I.B. of the Commission’s By Laws shall apply throughout this part. For the purposes of this part, additional terms are defined as follows:

(a) *By Laws* refers to the Commission’s By Laws as adopted and amended by the Commission pursuant to Article IV.c. and Article IV.i.(7) of the Compact, most recently amended on December 10, 1998, and dated July 1999;

(b) *Person* means an individual, corporation, business enterprise or other legal entity, either public or private, and expressly includes states;

(c) *Nuclear power station* means any facility holding a license from the U.S. Nuclear Regulatory Commission under 10 CFR Part 50.

(d) *Existing party states* means Connecticut and New Jersey collectively.

§ 1800.12 Procedures for declaring a state eligible for membership in the Compact.

(a) Any state seeking to become an eligible state under the Compact shall submit to the Chairman of the Commission six copies of a petition to become an eligible state. The petition shall discuss each of the conditions specified in §1800.13 and shall:

(1) Affirm that the petitioning state fully satisfies each condition; or

(2) Explain why the petitioning state does not or cannot fully satisfy any particular condition.

(b) Upon receipt of a petition from any state seeking to become an eligible state under the Compact, the Commission shall publish a notice in accordance with Article I.F.1. of the By Laws and shall initiate an adjudicatory proceeding to act on the petition. Any person may submit written comments on a petition, and all such comments must be received by the Commission within 30 days of notice that a petition has been submitted.

(c) The Commission shall evaluate the petition against the conditions for declaration of an eligible state specified in §1800.13. As part of the proceeding to evaluate a petition to become an eligible state, the Commission may, in its discretion, conduct a hearing pursuant to Article IV.i.(6) of the Compact and Article V.F.1. of the Commission’s By-Laws. For good cause shown, the Commission may issue an order shortening the notice period for hearings provided in Article I.F.1. of the By Laws to a period of not less than ten days.

(d) After review of the petition and after any hearing, if held, the Commission shall issue an order accepting or rejecting the petition or accepting the petition with conditions. If the Commission accepts the petition without conditions, the petitioning state shall be declared an eligible state and shall become a new party state upon passage of the Compact by its state legislature,

repeal of all statutes or statutory provisions that pose unreasonable impediments to the capability of the state to satisfy the conditions for eligibility (as determined by the Commission) and payment of (or arrangement to pay) the fee specified in Article IV.j.(1). If the Commission accepts the petition with conditions, the petitioning state may become an eligible state by satisfying all of the conditions in the Commission's order and providing an amended petition incorporating its compliance with all of the conditions in this subpart and in the Commission's order. The Commission will consider the amended petition as part of the original adjudicatory proceeding and will issue a new order accepting or rejecting the amended petition.

(e) A state that submits a petition for declaration as an eligible state that is rejected by the Commission may submit a new petition at any time. The Commission will consider the new petition without reference to the prior petition but may use evidence obtained in any prior proceeding to evaluate the new petition.

(f) The Commission's consideration of a petition for declaration of an eligible state shall be governed by the Compact, the Commission's By Laws, and this part.

§ 1800.13 Conditions for becoming an eligible party state.

The Commission shall evaluate a petition to become an eligible party state on the basis of the following conditions and criteria:

(a) To be eligible for Compact membership, a state must agree that it will be the voluntary host state upon admission to the Compact and will continue to be the voluntary host state for a least that period of time until all currently licensed nuclear power stations within the region have been fully decommissioned and their licenses (including any licenses for storage of spent nuclear fuel under 10 CFR Part 72) have been terminated.

(b) To be eligible for Compact membership, a state must agree that, so long as the petitioning state remains within the Compact, it will be the sole host state.

(c) To be eligible for Compact membership, a state must warrant the availability of a regional disposal facility that will accommodate 800,000 cubic feet of waste from generators located within the borders of the existing party states.

(d) To be eligible for Compact membership, a state must agree to establish a uniform fee schedule for waste disposal at the regional disposal facility that shall apply to all generators within the region. That uniform fee schedule, including all surcharges (except new surcharges imposed pursuant to Article V.f.3. of the Compact), shall not exceed the average fees that generators within the existing party states paid for disposal at the Barnwell, South Carolina, facility at the end of calendar year 1999, adjusted annually based on an acceptable inflation index.

(e) To be eligible for Compact membership, a state must agree with the existing states that regional generators shall be permitted to process or dispose of waste at sites outside the Compact boundaries based solely on the judgment and discretion of each regional generator.

(f) To be eligible for Compact membership, a state must agree with the existing states that the Commission may authorize importation of waste from non-regional generators for the purpose of disposal only if the host state approves and such importation does not jeopardize the warranted availability of 800,000 cubic feet of disposal capacity for waste produced by generators within the existing party states. A new party state must agree that regional generators shall not pay higher fees than non-regional generators and that all books and records related to the establishment or collection of fees shall be available for Commission review.

(g) To be eligible for Compact membership, in addition to the express limitations on non-host state and Commission liability provided in the Compact, a state must agree to indemnify the Commission or the existing party states for any damages incurred solely because of the new state's membership in the Compact and for any damages associated with any injury to persons or property during the institutional

control period as a result of the radioactive waste and waste management operations of any regional facility. The petitioning state must agree that this indemnification obligation will survive the termination of the petitioning state's membership in the Compact.

(h) To be eligible for Compact membership, a state must agree that any incentive payments made by the existing party states as an inducement for a state to join the Compact will be returned to the existing party states, with interest, on a pro rata basis if, for any reason, the regional disposal facility ceases to be available to generators in the existing party states for a period of more than six months (other than periods that have been expressly approved and authorized by the Commission) or is unavailable for disposal of 800,000 cubic feet of waste from generators within the borders of the existing states. In the event of such unavailability, the new party state must agree to return the incentive payments based on the following schedule:

(1) 75% of the incentive payment if the regional facility becomes unavailable prior to January 1, 2002;

(2) 50% of the incentive payment if the regional facility becomes unavailable on or after January 1, 2002, and prior to January 1, 2004;

(3) 30% of the incentive payment if the regional facility becomes unavailable on or after January 1, 2004, and prior to January 1, 2006;

(4) 20% of the incentive payment if the regional facility becomes unavailable on or after January 1, 2006, and prior to January 1, 2009;

(5) 10% of the incentive payment if the regional facility becomes unavailable on or after January 1, 2009, and prior to the time when all currently licensed nuclear power stations within the region have been fully decommissioned and their licenses (including any licenses for storage of spent nuclear fuel under 10 CFR Part 72) have been terminated.

(i) To be eligible for Compact membership, a state must agree with the existing states that once a new party state has been admitted to membership in the Compact pursuant to the rules in this part, declaration of any other state as an eligible party state will require the unanimous consent of all members of the Commission.

§ 1800.14 Modification to and enforcement of the rules in this part.

(a) Because of the importance of the conditions for declaration of an eligible state under the Compact, the rules in this part may only be modified, amended, or rescinded after a public hearing held pursuant to Article IV.i.(6) of the Compact and Article V.F.1. of the Commission's By Laws and by a unanimous vote of all members of the Commission.

(b) Any party state may enforce the rules in this part by bringing an action against or on behalf of the Commission in the United States District Court for the District of Columbia pursuant to Article IV.n. of the Compact.

(c) If, for any reason, any portion of the rules in this part shall be declared invalid or unenforceable, the remainder of the rules in this part shall remain in full force and effect.